wire" subloops.[1019] Furthermore, because the incumbent LEC's network demarcation point may be located at the NID, before the NID or beyond the NID,[1020] which is always located at the customer's premises, it is appropriate to discuss the NID together with the "inside wire" subloop.[1021]

[1019] We consider other types of subloops in the context of our loop unbundling rules. *See supra* Part VI.A.4.a.(v).

[1020] *UNE Remand Order*, 15 FCC Rcd at 3774, para. 169.

[1021] In using the phrase "inside wire" to define a discrete subloop within the incumbent LEC's local loop, we are cognizant of the fact that prior to the addition of the subloop to the list of UNEs in 1999, the term "inside wire" generally was thought to refer only to that deregulated portion of wiring within an end-user customer's premises that connected the customer premises equipment (CPE) to the incumbent LEC's telephone network or other CPE and was not part of the incumbent LEC's regulated network, because it was located on the customer's side of the demarcation point. In the *UNE Remand Order*, the Commission recognized that its rules regarding the location of the demarcation point, particularly in multiunit buildings, resulted in situations where the incumbent LEC owned and controlled wire within a customer premises that did, indeed, remain part of the incumbent LEC's regulated network. The Commission referred to this wire as "inside wire" also. *See* 47 C.F.R. § 51.319(a)(2)(i). The *UNE Remand Order* made clear that this "inside wire" was not limited only to wire that was physically inside the premises but may be located out-of-doors for many multiunit premises, for example, as may be the case in a garden apartment or campus environment. *See UNE Remand Order*, 15 FCC Rcd at 3774, para. 170. Similarly, in the *UNE Remand Order*, we noted that our use of the phrase "customer premises" encompassed not just the actual premises of end-user subscribers, but also the premises of the property owner such as "a landlord, a condominium, a university and so on," *i.e.*, "customer premises" encompassed any premises where the owner of that premises has the right to designate the MPOE. *See* 47 C.F.R. § 68.105(b).

We acknowledge that our previous use of the phrase "inside wire" to describe three different scenarios involving premises wiring, *i.e.*, (1) the unregulated wire on the end-user side of the demarcation point; (2) the wiring from the MPOE up to the end-user customer suite that may be under the control of the premises owner when the incumbent LEC's demarcation point is located at the MPOE; and (3) the customer premises wire that extends beyond the MPOE to the demarcation point of the incumbent LEC's network that remains under the incumbent LEC's control if the premises owner has not exercised its right to have the demarcation point and the MPOE coincide, may cause some confusion as noted by BellSouth. *See* BellSouth Petition for Reconsideration and Clarification, CC Docket No. 96-98 at 1-4 (filed Feb. 17, 2000) (BellSouth Feb. 17, 2000 Petition for Reconsideration); BellSouth Comments at 76. For this reason, we will refer to the "inside wire" on the incumbent LEC network side of the demarcation point, *i.e.*, between the MPOE and the demarcation point as the Inside Wire Subloop. We decline to define this wiring as "intra-building network cabling" as requested by BellSouth, *see* BellSouth Feb. 17, 2000 Petition for Reconsideration at 3, as that definition, which is found in Part 32 of the rules and used for accounting purposes, potentially limits the definition of the "Inside Wire Subloop." Part 32 defines "intra-building network cable" as follows: "This account shall include the original cost of cables and wires located on the company's side of the demarcation point or standard network interface inside subscribers' buildings or between buildings on one customer's same premises. Intra-building network cables are used to distribute network access facilities to equipment rooms, cross-connection or other distribution points at which connection is made with customer premises wiring." 47 C.F.R. § 32.2426(a). While we deny BellSouth's request, we have addressed herein the potential confusion that may have previously arisen in using the phrase "inside wire" to describe different portions of the premises wiring by defining the wiring that remains part of the incumbent LEC's network at a multiunit premises as the Inside Wire Subloop. The rules we adopt today with respect to the Inside Wire Subloop are not intended to impact or otherwise modify any aspect of our existing rules regarding the inside wire on the non-network side of the demarcation point, either inside the subscriber's suite or under the control of the premises owner as set forth in sections 68.100 *et seq. Id.* § 68.100 *et seq.*

344. In the *Local Competition Order*, the Commission declined to identify particular subloop elements as separate UNEs, because the record at that time did not sufficiently address the technical issues raised by the incumbent LECs as impediments to subloop unbundling.[1022] The Commission acknowledged that subloop unbundling could provide competitors flexibility in deploying portions of their own loop facilities and promised to revisit subloop unbundling at a later time.[1023] In the *UNE Remand Order*, however, the Commission determined that competitive LECs would be impaired without access to the incumbent LECs' subloops.[1024] The Commission found that access to subloops was likely to be the catalyst to the eventual deployment of competitive loops and without such access competitive LEC's would be discouraged from attempting to construct their own feeder facilities which, when combined with the incumbent LEC's distribution plant, would enable the competitor to serve customers with minimal reliance on the incumbent LEC.[1025] Specifically, subloop unbundling was adopted to redress three particular requesting carrier deployment impairments identified in the record at that time: 1) the need to interconnect with the incumbent LEC's network at or near customer premises to serve customers in multiunit premises; 2) the need to provide service to customers served by IDLC loops; and, 3) the need to access the copper portion of a loop to offer competitive xDSL service.[1026]

345. In ordering the unbundling of subloops, the Commission gave particular attention to unbundled inside wire subloops, specifically recognizing the impairments associated with facilities-based entry in multiunit buildings or campus environments.[1027] Indeed, the inside wire subloop was the only subloop for which the Commission devoted a separate subsection of its subloop rules.[1028] The Commission concluded that "requiring competitive LECs to convince landlords and customers to permit construction of redundant inside wiring would substantially impede market entry and competition."[1029] In addition, it found that lack of access to the inside wire subloop would impede facilities-based carriers' ability to develop their own networks

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[1022] *Local Competition Order*, 11 FCC Rcd at 15695-96, paras. 390-91.

[1023] *Id.* at 15696, para. 391.

[1024] *UNE Remand Order*, 15 FCC Rcd at 3789, para. 205.

[1025] *Id.*

[1026] *See id.* at 3792-95, paras. 215-18.

[1027] *See id.* at 3793, para. 216.

[1028] *See* 47 C.F.R. § 51.319(a)(2)(i). When the first Inside Wire Subloop rules were adopted in 1999, the Commission had commenced a related rulemaking proceeding, the *Competitive Networks* proceeding, to address, generally, barriers, including access to all types of customer premises wiring, which competitive LECs faced in gaining access to end-user customers in multiunit buildings or other environments where the premises occupied by the end-user customer was in a building owned or controlled by another. *See Competitive Networks*, 15 FCC Rcd at 22983.

[1029] *See UNE Remand Order*, 15 FCC Rcd at 3793, para. 216.

which, once developed, could eventually lead to the elimination of the loop element from unbundling obligations.[1030]

346. Similarly, in the *Local Competition Order*, the Commission ordered the unbundling of the NID, finding that competitors deploying their own loops must be able to interconnect those loops to customer premises wiring in order to provide service using their own facilities, especially to customers in multiunit buildings.[1031] In the *UNE Remand Order*, the Commission broadened the definition of the NID to encompass any means of interconnection of the incumbent LEC's distribution plant to customer premises wiring and to require that incumbent LECs permit a competitor to connect its own loop facilities to customer premises wiring through the incumbent LEC's NID if desired.[1032] The Commission declined to include the NID in the definition of the loop, or any other subloop element, emphasizing its intent to provide competitors flexibility in where they can access the subloop.[1033] Together, the subloop and NID unbundling rules recognize the necessity of these UNEs to overcoming existing impairments with respect to accessing customer premises wiring to provide competitive local services to customers desiring to take such services, particularly for facilities-based loop providers, in multiunit premises.[1034]

2. Subloops For Multiunit Premises Access

347. We limit our analysis herein to only those subloops associated with access to premises wiring at or near a multiunit customer premises.[1035] Parties submitting comments on subloops, other than subloop access at remote terminal locations, do so almost exclusively in the

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[1030] *Id.* at 3792, para. 215.

[1031] *Local Competition Order*, 11 FCC Rcd at 15697, para. 392.

[1032] *UNE Remand Order*, 15 FCC Rcd at 3802, para. 237; *see also* 47 C.F.R. § 51.319(a)(2).

[1033] *Id.*

[1034] *See UNE Remand Order*, 15 FCC Rcd 3793, para. 216 ("a facilities-based provider's ability to offer service in a multi-unit building or campus may be severely impaired if it must install duplicative inside wiring . . . requiring landlords and customers to permit the construction of redundant inside wiring could substantially impede market entry and competition"); *see also id.* at 3801, para. 232 ("the record indicates that requiring a requesting carrier to self-provision NIDs for all customers it seeks to serve would materially raise the cost of entry, delay broad facilities-based market entry and materially limit the scope and quality of competitors service offerings.")

[1035] We include within the definition of the subloops for which we require unbundled access, not only the Inside Wire Subloop, but also any other loop-accessible terminal *at, or near*, a multiunit customer premises where, as a result of the incumbent LEC's network architecture, a requesting carrier may need subloop access to utilize the Inside Wire Subloop or NID to reach the end user. These subloop unbundling rules seek to encompass the various other network configurations that may occur at a multiunit premises when the demarcation point, the MPOE, and the NID are not all located at the same point, *e.g.*, in the basement utility room of the particular building to be served. The Commission has defined "multiunit premises" in section 68.105 of the rules. *See* 47 C.F.R. § 68.105 (*multiunit* premises include but are not limited to, residential, commercial, shopping center and campus situations).

context of multiunit premises.[1036] We, therefore, limit our focus accordingly. To the extent parties address unbundled subloop access unrelated to multiunit premises, *e.g.*, access at remote terminals for the purpose of accessing IDLC loops or to provide xDSL services, we consider those subloop issues in the context of our loop unbundling rules.[1037] We conclude that requesting carriers are impaired without access to unbundled subloops associated with accessing customer premises wiring at multiunit premises.[1038] Based on evidence in the record, we find that the barriers faced by requesting carriers in accessing customers in multiunit premises are not unique to customers typically associated with the enterprise market residing in such premises but extend to all customers residing therein, including residential or other tenants typically associated with the mass market.[1039] Thus, we, expressly require subloop unbundling to reach all customers residing in multiunit premises.[1040] The use of unbundled subloops to access customers in multiunit premises is also not limited by the type or capacity of the loop the requesting carrier will provide.[1041]

[1036] *See, e.g.*, WorldCom Comments at 119-120; ALTS *et al.* Comments at 48; Sprint Comments at 30; AT&T Reply at 176.

[1037] *See supra* Part VI.A.4.a.(v). Specifically, because these other types of subloop access arise in the context of serving customers typically associated with the mass market over DS0 level mixed copper/fiber loops, we address them in the Mass Market loop impairment analysis. We note that the subloop unbundling rules adopted in this section are not intended to modify or otherwise change any aspect of the loop or subloop unbundling rules we also adopt today except to the extent expressly indicated.

[1038] We noted in the *UNE Remand Order*, for example, that the FDI which is the meet point between the feeder trunk line leading back to the central office and the "distribution" plant to the subscriber may be located in a utility room in a multiunit premises and the loop may go directly from the feeder to the inside wire. In this scenario, under the rules we adopt today, unbundled access to the FDI would be required as a subloop necessary to access the inside wire in the building. *See UNE Remand Order*, 15 FCC Rcd at 3790, para. 206 & n.398. Similarly, any other network configuration whereby access to the incumbent LEC's network in or near the multiunit premises facilitates access to the Inside Wire Subloop or other inside wire at the premises must be unbundled. In other words, any other technically feasible access point to these subloops, including but not limited to, the pole or pedestal, the NID, the MPOE, and the SPOI must be provided on an unbundled basis.

[1039] *See, e.g.*, AT&T Reply at 174-77 (incorporating by reference its March 8, 2002 Comments in WT Docket No. 99-217, *Competitive Networks*); WorldCom Oct. 25, 2002 Building Access *Ex Parte* Letter at n.21 (incorporating by reference multiple documents discussing these and related issues); ALTS *et al.* Comments at 48 n.118 (incorporating into record SBPP Mar. 8, 2002 Comments in *Competitive Networks*).

[1040] Competitive LECs serving customers residing in multiunit premises typically associated with the mass market face the same economic and operational barriers as serving customers residing in multiunit premises typically associated with the enterprise market.

[1041] While we recognize impairments related to multiunit premises access as one of a number of factors considered in crafting our unbundling rules for high-capacity loops, we accord substantially greater weight to these impairments with respect to subloop unbundling for multiunit premises access. We recognize that carriers seeking to provide all types of loop capacities to end users in these premises may encounter these impairments on an equal basis. For example, in a building where unbundled DS3 loops from the incumbent LEC are no longer required because such capacity has met the self-provisioning or available wholesale alternatives trigger, the availability of such capacity *to* the building does not correlate to the ability to take that capacity *up through the* building to the floor or suite of a customer to be served. *See, e.g.*, AT&T Reply at 176 (describing "fiber to the floor" limitations). Thus, to be clear, (continued....)

348. We find that competitive carriers are impaired on a nationwide basis[1042] without access to unbundled subloops used to access customers in multiunit premises.[1043] Because of their prior exclusive access, incumbent LECs have first-mover advantages with respect to access to customers in multiunit premises. Requesting carriers face many barriers in accessing customers in multiunit premises, including a general prohibition against facilities-based access; prohibitive sunk costs associated with rewiring a building to serve potentially only a single customer; the refusal for reasonable access to the existing premises wiring; or the refusal to allow installation of the carrier's own new wiring. Subloops associated with access to multiunit premises have economic characteristics similar to loops generally, *i.e.*, they are extremely time-consuming and expensive to duplicate on a pervasive scale and self-provisioning can be prohibitively costly.[1044] As explained above, the loop itself can be overwhelmingly difficult for competitors to self-deploy due to the sunk and fixed costs associated with entry. Many types of loops continue to represent an enduring "last-mile" bottleneck.[1045] Finally, the record reflects that no third-party wholesale alternatives to these subloops are available.[1046] Our findings regarding impairment with respect to subloops to serve multiunit premises, is consistent with our findings regarding loops, generally.[1047] Failure to recognize these barriers and their substantial preclusive effect on the ability of facilities-based entry to multiunit premises undermines the objectives of our unbundling mandates. For all requesting carriers, especially carriers constructing facilities-based networks, the ability to access subloops at, or near, the customer's premises in order to reach the infrastructure in those premises where they otherwise would not be able to take their loop the full way to the customer, is critical.[1048]

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unbundled subloops for multiunit premises access are available to requesting carriers irrespective of the capacity level or type of loop such carrier will provide to its customer at that premises. We note that existing premises wiring may often be suboptimal for provisioning higher capacity loops depending on the age of the wiring. Ideally, in these circumstances, competitive carriers prefer to install new wiring *if, and when*, they are permitted.

[1042] We note that some states have adopted rules that address various aspects of multiunit tenant access by competitive LECs. *See, e.g.*, Order Establishing Statewide Policy for MDU Access, Application No. C-1878/PI-23, (Neb. P.S.C. Mar. 2, 1999); Conn. Gen. Stat. § 16-2471 (1997); 16 Tex. Admin. Code § 26-129 (Sept. 7, 2000); Mass. DTE 98-36-A. These rules vary widely in scope and application and we have little evidence that that these provisions sufficiently mitigate the barriers to multiunit premises access associated with our subloop impairment finding.

[1043] *See* NuVox *et al.* Comments at 70 ("[n]o 'changed circumstances' have developed over the past two years that would support or justify removal of . . . subloops or NIDs from the national UNE list.").

[1044] *See id.* at 81-82; ALTS *et al.* Comments at 46.

[1045] *See supra* Part VI.A.4.

[1046] *See* NuVox *et al.* Comments at 81-82.

[1047] *See supra* Part VI.A.4.

[1048] *See* GCI Comments at 44; Sprint Comments at 30; ALTS *et al.* Comments at 46.

349. In reaching our conclusion, we note that no commenter, including incumbent LECs, argue that subloops associated with accessing wiring at multiunit premises, generally, should be removed from the list of UNEs.[1049] Indeed, one incumbent LEC states that it has not incurred large burdens or increased costs in having subloops defined as UNEs and doubts if it has been a burden for other LECs either.[1050] We acknowledge that the record contains some evidence that competitor's use of subloop UNEs, to date, has been limited.[1051] We agree that this is largely the result of the fact that competitive carriers have relied more heavily on entry methods such as loops in combination with switching or stand-alone loops which take them all the way to the end-user customer, even in multiunit premises, rather than self-provisioning facilities-based networks, including loop plant, to the customer's premises. We expect that, collectively, the unbundling rules we adopt today will both facilitate and encourage facilities-based provisioning and, thus, lead to a greater demand for these unbundled subloops in the future. Accordingly, we seek to ensure that those carriers that self-deploy loops are able to access the last few feet necessary to serve the end-user customer residing in a multiunit premises.

350. Finally, our previous subloop unbundling rules contained a provision stating that access to the subloops is subject to the Commission's collocation rules.[1052] This provision was included to facilitate remote terminal access particularly for accessing IDLC loops and copper loop portion for xDSL service.[1053] The record indicates that this provision may have been interpreted to require either that a requesting carrier establish collocation as its chosen method of interconnection pursuant to section 51.321 of our rules[1054] in order to obtain a subloop, or that the requesting carrier must establish a collocation arrangement at the specific point it accesses the

[1049] *See* GCI Comments at 43-44 (discussing the fact that a competitive LEC is impaired without access to the loop or subloop because constructing loop facilities is not a viable alternative to unbundling; there are no economically feasible alternative sources available; and even GCI, who is constructing its own loop facilities, is years away from being able to do it on a widespread basis); ALTS *et al.* Comments at 46-47 (asserting that the Commission should continue to require unbundled access to subloops for the same reasons it must continue to provide unbundled access to loops; access to the subloop remains crucial to competitive LECs who self-provision parts of their networks and need access to discrete portions of the loop); Sprint Comments at 30; BellSouth Comments at 74-76; *see also* Supra Comments at 9; Texas Commission Reply at 12; California Commission Comments at 17. We note, however, that BellSouth and Verizon take issue with the way multiunit premises subloop access at a SPOI has been required. *See* BellSouth Feb. 17, 2000 Petition for Reconsideration at 4-5; Bell Atlantic Petition for Reconsideration and Clarification, CC Docket No. 96-98 at 13-15 (filed Feb. 17, 2000) (Verizon Feb. 17, 2000 Petition for Reconsideration). We address subloop access through a SPOI below. *See infra* note 1058. Other parties argue, generally, that the Commission should retain its entire currently-specified list of unbundled elements including subloops. *See, e.g.*, Rural Independent Competitive Alliance Comments at 2; Illinois Commission Comments at 5; GSA Comments at 5; Pennsylvania Office of the Consumer Advocate *et al.* Comments at 19-22.

[1050] *See* Sprint Comments at 30; *see also* Qwest Comments at 45-46 (suggesting the continued availability of subloops in arguing against unbundling for advanced services).

[1051] *See* Sprint Comments at 30.

[1052] 47 C.F.R. § 51.319(a)(2)(iv).

[1053] *See UNE Remand Order*, 15 FCC Rcd at 3794-3800, paras. 218-29.

[1054] 47 C.F.R. § 51.321(b).

subloop, including those subloops associated with multiunit premises access.[1055] The rules we adopt today make clear that *no* collocation requirement exists with respect to subloops used to access the infrastructure in multiunit premises. Incumbent LECs are required to provide subloops to access multiunit premises without collocation.[1056] Competitive carriers are able to access these subloops at any technically feasible terminal point at or near the building *in any technically feasible* manner.[1057] This will provide facilities-based competitors the greatest flexibility in designing their networks and most efficiently accessing these subloops only at the point necessary.[1058]

[1055] The record contains evidence that at least one incumbent LEC imposes a collocation requirement on requesting carriers ordering subloops at multiunit premises. *See* Letter from J.G. Harrington, Counsel for Cox Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Dec. 19, 2002) (discussing issues associated with accessing multiunit premises wiring) (Cox Dec. 19, 2002 *Ex Parte* Letter).

[1056] This is not to suggest that a requesting competitive LEC and an incumbent LEC may not agree that some method of "collocating" a competitor's terminal to cross-connect with the incumbent LEC's terminal at a subloop access point at a multiunit premises is desirable, taking into account space availability.

[1057] To the extent there is disagreement with respect to what is "technically feasible" with respect to subloop access at a multiunit premises, this issue is left to the state in the context of particular interconnection arrangements pursuant to section 252 of the Act, which can take into account the particular incumbent LEC's network architecture as well as the requesting carrier's network. *See UNE Remand Order*, 15 FCC Rcd at 3797, para. 224. Once a state determines that it is technically feasible to unbundle a subloop at a particular point, an incumbent LEC shall have the burden of demonstrating that it is not technically feasible to unbundle its own loop at that point. WorldCom requests clarification that state determinations of "technically feasible" subloop unbundling may occur in state proceedings that are not limited solely to section 252 arbitration proceedings, but may include other state proceedings conducted pursuant to and consistent with section 252 of the Act. We agree that this is an important clarification and therefore reflect it in our rules. *See* MCI WorldCom Feb. 17, 2000 Petition for Clarification at 20-21.

[1058] In requiring unbundled subloops at, or near, a multiunit premises for access to the wiring at the premises, including Inside Wire Subloops, we note that our current requirement relating to the incumbent LEC's obligation to construct a single point of interconnection (SPOI) at multiunit premises locations for access to these subloops requires the incumbent LEC to construct a SPOI even where it has no facilities into the premises. We agree with BellSouth that if an incumbent LEC has no facilities which it owns, controls or leases at a multiunit premises through which it serves, or can serve, customers at such premises, it should not be obligated to construct an SPOI. *See* BellSouth Feb. 17, 2000 Petition for Reconsideration at 4-5. Thus, we grant that portion of BellSouth's petition requesting that we limit the incumbent LEC's obligation to construct a SPOI to only those multiunit premises where the incumbent LEC has distribution facilities to that premises and either owns, controls, or leases the inside wire at the multiunit premises, including the Inside Wire Subloop, if any, at such premises. We further clarify as requested by BellSouth that the incumbent LEC's obligation to build a SPOI for multiunit premises only arises when a requesting carrier indicates that it intends to place an order for access to an unbundled subloop network element via a SPOI. *See* BellSouth Feb. 17, 2000 Petition for Reconsideration at 4-5; *see also* BellSouth Comments at 75.

In clarifying the rules we adopt today regarding the extent of an incumbent LEC's obligation to construct a SPOI, we deny Verizon's request to eliminate the SPOI requirement. *See* Verizon Feb. 17, 2000 Petition for Reconsideration at 13-15. Verizon claims a SPOI rule requires it to construct a new network element. A SPOI is a means of interconnection with a network element, rather than part of the network element. We locate our authority to require the SPOI in the section 251(c)(2) requirement that incumbent LECs provide interconnection "at any technically feasible point within the carrier's network. *See* 47 U.S.C. § 251(c)(2). We reject the argument advanced by Verizon that the SPOI requirement is inconsistent with either section 251(c)(2) of the Act or the Eighth Circuit's decision in *Iowa Utils. Bd.* The Eighth Circuit endorsed the Commission's statement that "the obligations imposed by sections (continued....)

a. Inside Wire Subloops and NIDs.

351. We find that requesting carriers continue to be impaired on a nationwide basis without unbundled access to the incumbent LEC inside wire subloops and NIDs. The record conclusively supports our determination that inside wire subloops and NIDs should be unbundled. The economic impairment competitive LECs face, generally, with respect to most loops is exacerbated through the outright barriers they face in gaining access to customers from owners of multiunit premises. This impairment is especially problematic in situations where competitors are able to construct and provision a local loop using their own facilities all the way to a customer premises, yet still remain unable to reach the end user in that premises.[1059] If competitors can only get as far as the building or property line MPOE with their own facilities because they are prohibited from installing their own customer premises wiring to reach a customer at that premises, the incumbent LEC's inside wire subloop or NID may be the exclusive means of reaching an end user. Often, there is no alternative inside wiring other than the incumbent LEC's available at the premises.[1060] In cases where customer premises wire is not part of the incumbent LEC's network, hence not an inside wire subloop, the NID may be the sole means of accessing this customer premises wire.

352. We note that the *Triennial Review NPRM* raised the issue of whether the NID is appropriately considered part of the loop when a competitor requests access to the loop or a subloop.[1061] We have previously declined to include the NID as part of the loop[1062] in adopting subloop unbundling rules, yet we have recognized that the loop network element does, indeed, include the NID functionality when an end-to-end loop is provided.[1063] Under the rules we adopt today, we identify at least three scenarios where competitive LECs are impaired without access to the NID functionality: (1) access to a stand alone unbundled NID; (2) access to the NID

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251(c)(2) and section 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements." *Iowa Utils. Bd.*, 120 F.3d at 813 n.33. Section 251(c)(2) expressly requires incumbent LECs to provide interconnection "at any technically feasible point" and the Eighth Circuit held that, pursuant to section 251(c)(2), incumbent LECs must modify their networks to accommodate interconnection and access to UNEs. Thus, incumbent LECs are under a continuing obligation to accommodate technically feasible methods of interconnection, including modifying their networks to do so, and the Eighth Circuit's decision does not relieve incumbent LECs of the requirement to construct a SPOI necessary to accommodate subloop access at multiunit premises.

[1059] Owners of multiunit premises have no nationwide obligation to provide competitive LECs reasonable and nondiscriminatory access to their premises on the same terms that the incumbent LEC has access. This often includes the ability to timely and economically install customer premises wiring and other necessary facilities (including the NID functionality) to reach end-user customers. *See infra* para. 353.

[1060] *See, e.g.*, Letter from John T. Nakahata, Counsel for GCI, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, 01-318, 98-56, 98-141, Attach. at 7 (filed Jan. 15, 2003).

[1061] *Triennial Review NPRM*, 16 FCC Rcd at 22803, para. 48 n.110.

[1062] *UNE Remand Order*, 15 FCC Rcd at 3802, para. 235.

[1063] *Line Sharing Order*, 14 FCC Rcd at 20923, para. 17 n.29.

functionality as a component of an unbundled end-to-end loop or a subloop and (3) access to the NID to utilize the inside wire subloop. We note that different incumbent LEC network configurations determine where the NID occurs in each of the three scenarios[1064] and we specify the incumbent LEC's unbundling obligations with respect to each of these scenarios.

353. First, we require the NID to be offered as a separate UNE for requesting carriers requiring only stand alone NID access. Incumbent LECs are required to provide unbundled access to the NID on the incumbent LEC's network side on a stand-alone basis to permit a requesting carrier to connect its own loop facilities to the premises wiring at any customer location.[1065] The incumbent LEC's NID in this case provides a critical and necessary element to enable the competitor to reach its customer and a UNE-based rate for this access is appropriate. Second, when a requesting carrier requests access to an unbundled local loop or subloop to reach a customer, the NID functionality is an included component of that loop or subloop, and must be provided to the requesting carrier as such.[1066] In this case the incumbent LEC should not impose

[1064] For example, the NID can mark the end of the loop, hence, the end of the incumbent LEC's network. The NID can also be within the loop at a multiunit premises if the incumbent LEC's network extends into the building beyond the MPOE; in this case the NID can be characterized as part of a subloop. Similarly, competitive LEC's may need unbundled access to the NID on the incumbent LEC's network side to utilize wiring in the building that is not part of the incumbent LEC's network, or they may need only one time contact with the incumbent LEC's NID on the customer's side of the NID to disconnect the customer's dedicated wiring and reconnect it to the competitive LEC's own NID if the competitive LEC has installed its own NID. In this latter case, the competitive LEC's contact with the NID on the customer side does not constitute access to an incumbent LEC's UNE and the competitive LEC should neither incur a charge from the incumbent LEC associated therewith nor can the incumbent LEC require the presence of one of its technicians.

[1065] For example, a competitor will generally need access to the NID on a stand-alone basis on the incumbent LEC's network side of the NID when the competitive LEC is provisioning its own loops to the premises; the NID and the demarcation point are located at the MPOE; and the wiring in the premises is not part of the incumbent LEC's network. In this scenario, accessing the incumbent LEC's NID on the network side enables the competitor to directly access the premises wiring to serve its customer either because the competitor has been prevented from installing its own NID and duplicative premises wiring, or the cost of doing so to serve a single customer is prohibitively expensive. Verizon opposes a requirement that permits competitive LECs to connect their loops directly to the incumbent LEC's NID because of the risk of overvoltage. Verizon Feb. 17, 2000 Petition for Reconsideration at 11-13. We reject Verizon's argument that requesting carriers be denied direct access to the NID because of the risk of overvoltage. The record does not support a finding that overvoltage is a likely occurrence at NIDs because competitive LECs generally deploy fiber loops, which will ground in the terminating box rather than the NID. *See* WorldCom Comments in Response to Verizon Feb. 17, 2000 Petition for Reconsideration at 10-11 (Prevalence of fiber loops deployed by requesting carriers and the spare grounding terminals at incumbent LEC NIDs guard against overvoltage); *see also* AT&T Comments In Response to Verizon Feb. 17, 2000 Petition for Reconsideration at 12; MediaOne Comments in Response to Verizon Feb. 17, 2000 Petition for Reconsideration at 2; Sprint Comments in response to Verizon Feb. 17, 2000 Petition for Reconsideration at 9 (it is technically feasible for requesting carriers to connect their loops directly to incumbent LEC NIDs). Where a requesting carrier may deploy copper, incumbent LECs can require requesting carriers interconnecting at the NID to take appropriate steps to properly secure displaced or turned-back wiring, such as taping the ends of the wire, or attaching the displaced wire to spare terminals within the NID, through interconnection arrangements. We therefore deny Verizon's petition with respect to enabling competitive LECs to directly connect their loops to the incumbent LEC's NID. *Id.*

[1066] For example, a competitive LEC ordering a full loop or a subloop at some accessible point before the loop reaches the customer premises wiring will be doing so because it is unable to otherwise reach its customer. In this (continued....)

a separate charge for the NID functionality as it should be included in the unbundled loop or subloop charge. Similarly, in network configurations where the NID does not coincide with the termination point of the incumbent LEC's network at a multiunit premises, *i.e.*, the demarcation point, and a portion of the loop extends beyond the NID, a competitor accessing the NID for the purpose of connecting to the incumbent LEC's inside wire subloop is entitled to the NID functionality as part of the inside wire subloop.[1067] Finally, we note that in scenarios where a competitive LEC has constructed its own NID at a premises and needs only to make contact with the incumbent LEC's NID to disconnect the customer's wiring from the incumbent LEC's NID and reconnect it to the competitive LEC's NID, the competitive LEC is *not* accessing or using the incumbent LEC's NID on an unbundled basis and no associated incumbent LEC charge may be imposed on the competitive LEC.[1068]

(i) Inside Wire Subloop Impairment

354. We require incumbent LECs to unbundle the inside wire subloop. We conclude that a finding of impairment for the inside wire subloop removes a disincentive for competitors to deploy their own loop infrastructure. Without unbundled access to the inside wire subloop, a facilities-based competitor could conceivably construct an entire facilities-based network with no reliance whatsoever on the incumbent LEC's network elements, and still be unable to reach an end user in a multiunit premises or campus-type environment.[1069] Unless a competitor has access to the unbundled incumbent LEC inside wire subloop, competitors may simply have no alternative, especially in multiunit premises, if the premises owner simply refuses to enable the competitive LEC to construct its own wiring.[1070] In situations where the competitor may be able

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scenario, ordering the loop or subloop is intended to take the competitor all the way to the customer. Because the NID is the functionality that connects the distribution plant to the customer premises wiring it is part of that loop and must be provisioned as such. Depending again on where the incumbent LEC's network demarcation point is located at the premises, the NID may either mark the end of the loop or be at some point within the loop before the demarcation point. One commenter suggests that competitive LECs ordering an end-to-end loop (or subloop) to reach a customer should have the NID functionality included in the loop *without a separate charge. See* AT&T Comments at 162. We agree and expect that the NID rules we adopt today make that clear going forward. In the unlikely event that a competitive LEC does not need the NID at a location where it orders an unbundled loop or subloop that includes the NID functionality, this scenario should be accommodated through a separate negotiation.

[1067] In buildings where the incumbent LEC has not located the demarcation point at the MPOE and its network extends into the building, the NID may nevertheless be located at the MPOE. In this scenario, a competitor may need access to that NID to gain access to the Inside Wire Subloop. Since the NID would not mark the end of the incumbent LEC's network in this scenario, accessing the Inside Wire Subloop at the NID would provide the NID functionality for that subloop.

[1068] *See* AT&T Comments at 162.

[1069] It would be an unintended perverse result which would run afoul of one of our principal objectives in implementing the Act--the encouragement of facilities-based competition--if our rules did not accommodate this impairment while enabling competitors that continue to rely on the incumbent LEC for a full unbundled local loop (which by definition includes the Inside Wire Subloop) to gain unimpaired access to the same end users.

[1070] If there is a portion of the incumbent LEC's loop at the premises on the incumbent LEC's side of the NID, the subloop unbundling rules we adopt today will ensure useful access to the NID. *See* WorldCom Comments at 119-20. (continued....)

to negotiate the right to install its own wiring, consistent with our finding of financial/economic barriers for self-provisioning most loops and subloops, generally, duplication of the inside wire subloop, particularly for a limited number of tenants is both cost and time prohibitive and could require competitors to incur sunk costs which may never be recoverable.[1071]

355. Commenters confirm that in those premises where the demarcation point of the incumbent LEC's network is not located at the MPOE and the incumbent LEC's network extends into the premises, a competitor's access to the incumbent LEC's inside wire is often the only means by which a competitive LEC can practically offer service to customers.[1072] There is no evidence that any third-party alternative providers exist and self-provisioning is extremely difficult, if not impossible. The record further reflects that competitive carriers continue to experience barriers with respect to their ability to gain access to multiunit premises to install their own facilities as building owners regularly impose unreasonably high entry rates on competitive LECs; fail to negotiate on a timely basis;[1073] or impose uneconomic limitations on the installation of inside wiring.[1074]

(ii) NID Impairment

356. We conclude that the NID should remain available as an UNE as the means to enable a competitive LEC to connect its loop to customer premises inside wiring.[1075] As noted by commenters, the NID is the gateway to the consumer and thus the key to local competition.[1076]

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We recognize that at those premises where the building owner has exercised its right to require the incumbent LEC to place its demarcation point at the MPOE pursuant to 47 C.F.R. § 68.105, the wiring at that premises will not be part of the incumbent LEC's local loop and our Inside Wire Subloop rules may not aid the competitor in reaching the customer if the building owner will not enable the competitor to construct its own wiring (assuming such construction would even be economically feasible). In this situation, however, enabling competitive LECs to connect their loop to the incumbent LEC's unbundled NID gives competitive LECs access to the existing inside wire used by the incumbent LEC to reach its customers even though this inside wire may not be an UNE. We reiterate our requirement that access to such wiring be provided to a competitive LEC on non-discriminatory terms where another carrier providing service at the premises over such wire, *e.g.*, the incumbent LEC, has responsibility for the installation and maintenance of the wire. Similarly, we expect building owners to exercise the control of this wiring in a non-discriminatory way. *See Competitive Networks Order*, 15 FCC Rcd at 23009, para. 57.

[1071] *See* ALTS *et al.* Comments at 42.

[1072] WorldCom Reply at 170; NuVox *et al.* Comments at 81 (citing TDS Jackson Aff. at para. 10 n.251) ("For residential and small business customers who are served off basic loops or subloops, there is absolutely no way to justify overbuilding LEC facilities using current technology.").

[1073] *See, e.g.*, WorldCom Comments at 120 (noting that it takes 6-9 months to negotiate); AT&T Reply at 174-79.

[1074] *See, e.g.*, AT&T Reply at 176.

[1075] *See, e.g.*, NuVox *et al.* Comments at 83-84; NuVox *et al.* Reply at 39; GCI Comments at 43-44; WorldCom Comments at 119-20; WorldCom Reply at 170-71; Supra Comments at 9; Sprint Comments at 31; ALTS *et al.* Comments at 60.

[1076] NuVox *et al.* Comments at 83.

Indeed, the record shows that the NID may often be the only means through which a competitive LEC can provide facilities-based service to customers, particularly those located in multiunit premises.[1077] As we noted above in our discussion of the inside wire subloop, unbundled access to the NID ensures that competitors are able to access customer premises inside wiring owned, controlled or used by the LEC, even if competitors are precluded by the premises owner from installing duplicative, yet necessary, wiring to reach their customer.[1078] The Commission first recognized this in the *Local Competition Order*[1079] and we find it to remain the case today. If anything, the record suggests that as more and more competitors begin deploying their own local loop facilities in lieu of relying on the incumbent LEC loop, access to the unbundled NID will be more critical than ever.[1080] We agree that unbundled access to the NID remains a crucial catalyst to facilities-based competition.[1081] The record demonstrates that competitive carriers face numerous situations where access to the unbundled NID is critical to the ability to access the LEC's inside wire subloop or other customer premises inside wiring beyond the demarcation point in order to reach the end-user customer.[1082] Only one commenter, Verizon, opposed continued unbundling of the NID. We disagree with Verizon that because no requests for unbundled access to the NID have been made in Verizon territory, no requesting carrier can reasonably claim that it is impaired without access to the LEC's unbundled NID.[1083] The record reflects otherwise on a nationwide basis.

[1077] *See, e.g.*, WorldCom Comments at 120; Sprint Comments at 31-32.

[1078] *See supra* para. 352.

[1079] *Local Competition Order*, 11 FCC Rcd at 15697, para. 392.

[1080] *See, e.g.*, GCI Comments at 43; WorldCom Reply at 170-71; Sprint Comments at 32; ALTS *et al.* Comments at 60.

[1081] *See, e.g.*, ALTS *et al.* Comments at 60 (noting that "unbundling the NID promotes facilities-based competition by allowing carriers to reduce their reliance on the incumbent by interconnecting their facilities closer to the customer.").

[1082] *See, e.g.*, WorldCom Comments at 120; WorldCom Reply at 170-71; Sprint Comments at 31-32; *see also* Cox Dec. 19, 2002 *Ex Parte* Letter.

[1083] *See* Verizon Comments at 122 n.433. While it may initially appear that AT&T, like Verizon, suggests that the NID need not be separately unbundled from the loop so as to prevent competitors from accessing it on a stand-alone basis, AT&T's comments appear to be directed both at how a competitive LEC is *charged* for access to the NID functionality and whether the NID functionality is to be provided as part of a loop or subloop when ordered by a competitive LEC rather than whether it should be available as a separate unbundled element to the extent competitive LECs require access to the NID on a stand-alone basis. *See* AT&T Comments at 162; AT&T Corp. Petition For Reconsideration and Clarification of the Third Report and Order, CC Docket No. 96-98 at 19-20 (filed Feb. 17, 2000) (AT&T Feb. 17, 2000 Petition for Reconsideration). We have distinguished above those scenarios where the NID must be provisioned as part of the loop or subloop when a competitive LEC orders a loop or subloop and those scenarios when charges for stand-alone NID access are appropriate. The NID and subloop unbundling rules we adopt herein ensure that competitive LECs obtain a full loop or subloop, including the network termination portion of that loop or subloop, if required, yet preserves the ability of facilities-based LECs to obtain access to only the NID on a stand-alone basis when required. AT&T's February 17, 2000 petition for reconsideration with respect to loop and subloop unbundling requirements is therefore moot.

357. The record also reveals that the equipment, labor and construction cost of duplicating the NID functionality at every customer location continues to be prohibitive,[1084] and, thus, presents a barrier to entry.[1085] Moreover, the record indicates that no competitive NID providers exist.[1086] Finally, commenters offer compelling evidence that from an operational perspective, denying competitors the ability to access the incumbent LEC's unbundled NID could result in complicated inside wire rearrangements that would result in lengthy service delays and costs and result in a waste of resources for all carriers involved.[1087]

358. We decline to adopt in this Order more specific rules defining, on a nationwide basis, the manner and scope of access to the unbundled NID functionality.[1088] Individual incumbent LEC and competitive LEC arrangements governing the process and procedures for obtaining access to an UNE to which a competitive LEC is entitled, are more appropriately addressed in the context of individual interconnection agreements pursuant to section 252 of the Act. Should a competitive LEC believe that the incumbent LEC is imposing unreasonable or discriminatory requirements, either in the negotiation or implementation stage of an interconnection arrangement, forums to address such issues are set forth in the Act.[1089] These same forums are available to the incumbent LEC. We note, however, that the record contains evidence that at least one incumbent LEC requires competitive LECs seeking access to the NID or inside wire subloop to undertake a lengthy and burdensome process at the customer premises

[1084] *See, e.g.*, Sprint Comments at 31 ("[I]t is the total cost of installing a NID at every customer location that substantially impairs requesting carriers"); ALTS *et al.* Comments at 59 ("The cost/benefit equation of self-provisioning NIDs has not changed since the *UNE Remand Order*. Self-provisioning NIDs at numerous locations would cause competitive LECs to incur duplicative expense and delay the timeframe in which they are able to provide service."); *see also* GCI Comments at 42- 43; WorldCom Comments at 120; NuVox *et al.* Comments at 84; NuVox *et al.* Reply at 39 n.169.

[1085] We reached a similar conclusion in the *UNE Remand Order*. *See UNE Remand Order*, 15 FCC Rcd at 3801, para. 232.

[1086] NuVox *et al.* Comments at 84 ("[T]he CLEC Coalition knows of no vendor that can provide it with or install NIDS at the locations they serve. Thus, they must continue to rely on LECs for NID access in order to have entry to customer premises."); *see also* Sprint Comments at 32 ("Sprint is unaware of any alternative providers of standalone NIDs.").

[1087] *See* Sprint Comments at 32; *see also* WorldCom Comments at 120 ("It would be prohibitively expensive for a CLEC leasing unbundled loops to single unit premises to dispatch technicians to each unit to install a new NID, and it would be wasteful to impose on new entrants the costs both of disconnecting loops and NIDs that are normally combined in ILEC's networks and of installing new and unnecessary NIDs.").

[1088] *See* BellSouth Comments at 75-76 (discussing hypothetical "hazards" that competitive LECs may cause to an end user's premises through accessing the incumbent LECs NID and arguing that competitive LECs need to agree to follow practices and procedures that ensure safety and continuity of service); *see also* Cox Dec. 19, 2002 *Ex Parte* Letter (discussing its experience with requirements imposed by certain incumbent LECs associated with a competitive LECs need to access the NID functionality and requesting that the Commission adopt a uniform nationwide rule which would prohibit unreasonable requirements).

[1089] *See generally* section 252 of the Act governing the process for interconnection negotiations and related disputes. 47 U.S.C. § 252.

to "collocate" a separate terminal facility in order to gain access to the inside wire subloop, or other inside wire used by the LEC to access customers in multiunit premises.[1090] We find such a requirement to be contrary to the NID and inside wire subloop unbundling rules we adopt today and therefore prohibit such requirements.[1091] Similarly, a competitive LEC seeking to make contact with the incumbent LEC's NID for the purpose of disconnecting wiring on the customer's side of the NID so that the competitive LEC can reconnect such customer wiring to its own NID is *not* accessing the incumbent LEC's NID as a UNE. As such, an incumbent LEC requirement to have its technician present and to impose an associated charge on the competitive LEC for such contact on the non-network side of the NID would also be contrary to the rules we adopt today. Accordingly, we therefore prohibit these types of requirements as well.

C. Dedicated Transport

1. Summary

359. Pursuant to the approach of the *Triennial Review NPRM*, the Commission adopts in this Order a more granular unbundling analysis for transport facilities.[1092] As discussed above, this analysis comports with the guidance of the Supreme Court and the D.C. Circuit which call for the Commission "to apply *some* limiting standard" and to demonstrate "a reasonable basis for thinking that competition is suffering . . . impairment."[1093] Our findings reflect these admonitions as we carefully assess the availability of network elements from alternative sources outside the incumbent LECs' facilities.[1094] As an initial matter, we limit our definition of the dedicated transport network element to only those transmission facilities connecting incumbent LEC switches or wire centers. The Commission makes findings regarding impairment as to different capacities of transport. We believe that our analysis of transport will create market certainty and provide incentives for competitive LECs to deploy and utilize alternate facilities.[1095] Specifically, based on the evidence in the record, we make the following determinations:

[1090] *See* Cox Dec. 19, 2002 *Ex Parte* Letter.

[1091] As we have noted in para. 350, *supra*, we recognize that facilities-based carriers, in particular, may use an alternative method of interconnection as provided in for in section 51.321 of the rules, 47 C.F.R. § 51.321. Moreover, with respect to subloops to access multiunit premises including Inside Wire Subloops, a collocation requirement would be unduly burdensome and unnecessary.

[1092] *Triennial Review NPRM*, 16 FCC Rcd at 22809-11, paras. 63-64.

[1093] *Iowa Utils. Bd.*, 525 U.S. at 388 (emphasis in original); *USTA*, 299 F.3d at 422.

[1094] *See UNE Remand Order*, 15 FCC Rcd at 3861-62, paras. 366-68.

[1095] Providing a limitation on the availability of higher capacity unbundled transport may also encourage technological innovation that allows more efficient use of lower capacity bandwidth levels.